

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AMAZON.COM, INC.,

Plaintiff,

v.

DISCOVERY COMMUNICATIONS, INC.,

Defendant.

No. C09-0681 RSL

**JOINT STATUS REPORT AND  
DISCOVERY PLAN**

**JOINT STATUS REPORT AND DISCOVERY PLAN**

The parties, having met and conferred pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, respectfully submit this Joint Status Report and Discovery Plan:

**1. A statement of the nature and complexity of the case.**

This is a patent infringement action involving four patents assigned to plaintiff, Amazon.com: U.S. Patent No. 6,006,225 (the “225 Patent”); U.S. Patent No. 6,169,986 (the “986 Patent”); U.S. Patent No. 6,266,649 (the “649 Patent”); U.S. Patent No. 6,317,722 (the “722 Patent”) (collectively “the patents-in-suit”).

- 1       **2. A statement of which ADR method (mediation, arbitration, or other) should be**  
2       **used. The alternatives are described in Local Rule CR 39.1 and in the ADR**  
3       **Reference Guide which is available from the clerk's office. If the parties believe**  
4       **there should be no ADR, the reasons for that belief should be stated.**

5       The parties agree that mediation shall be the ADR method used.

- 6       **3. Unless all parties agree that there should be no ADR, a statement of when**  
7       **mediation or another ADR proceeding under Local Rule CR 39.1 should take**  
8       **place. In most cases, the ADR proceeding should be held within four months**  
9       **after the Report is filed. It may be resumed, if necessary, after the first session.**

10       The parties agree that mediation should take place after the Court's Markman ruling.

11       Plaintiff Amazon.com proposes that mediation occur by August 5, 2010.

12       Defendant Discovery proposes that Mediation occur by September 27, 2010.

- 13       **4. A proposed deadline for joining additional parties.**

14       The parties agree that any additional parties shall be joined no later than March 30,  
15       2010.

- 16       **5. A proposed discovery plan that indicates:**

- 17       **A. The date on which the FRCP 26(f) conference and FRCP 26(a) initial**  
18       **disclosures took place;**

19       The parties held their FRCP 26(f) conference on September 3, 2009. The parties  
20       exchanged their FRCP 26(a) initial disclosures on September 10, 2009.

- 21       **B. The subjects on which discovery may be needed and whether discovery**  
22       **should be conducted in phases or be limited to or focused upon particular**  
23       **issues;**

24       Discovery is necessary on the issues of infringement, damages, validity,  
enforceability, and affirmative defenses. Furthermore, the parties have submitted proposed  
case schedules attached as Exhibit A, pursuant to local and federal rules.

1           **C.     What changes should be made in the limitations on discovery imposed**  
2           **under the Federal and Local Civil Rules, and what other limitations**  
3           **should be imposed;**

4           The parties agree that this is a case where the limit on the total number of  
5           interrogatories that a party may serve on another should be increased to thirty-five.

6           Plaintiff Amazon.com proposes that, given that this case involves four separate  
7           patents, the limit on the total number of depositions that each party may take, excluding the  
8           depositions of third parties, should be increased to twenty. Further, Amazon.com does not  
9           agree with the proposal set forth by Discovery below to mix discovery between this case and  
10          a separate litigation occurring in the United States District Court for the District of Delaware.  
11          Since the separate litigation between Amazon.com and Discovery in Delaware relates to  
12          different patents, different accused products, and will likely entail depositions of different  
13          witnesses, there is no need and no reason to adopt the proposal set forth by Discovery below.  
14          More specifically, if testimony is required of witnesses in multiple proceedings, the parties  
15          will work together to conserve resources and respect witness time and availability. But  
16          conflating discovery among proceedings related to distinct patents and products will both  
17          unnecessarily complicate the administrative duties of the two respective courts and provide  
18          confusing testimony.

19          Defendant Discovery proposes that the limit on the total number of depositions that  
20          each party may take, including the depositions of third parties, should be increased to twenty.  
21          Discovery further proposes that any deposition taken in *Discovery Communications, Inc. v.*  
22          *Amazon.com, Inc.*, Case No. 09-178-ER, pending in the United States District Court for the  
23          District of Delaware (“Delaware Litigation”), shall be admissible as though it were noticed  
24          and conducted in this matter, and Discovery will seek inclusion of a corollary provision in the

1 case management statement in that matter. Thus, Discovery proposes that no witness shall be  
2 deposited separately in both this matter and the Delaware Litigation absent leave of court  
3 supported by good cause.

4 The parties agree that no other changes to the limitations on discovery imposed by the  
5 Federal and Local Civil Rules appear to be necessary.

6 **D. A statement of how discovery will be managed so as to minimize expense**  
7 **(e.g., by foregoing or limiting depositions, exchanging documents**  
8 **informally, etc.); and**

9 The parties agree to work together to minimize discovery disputes.

10 **E. Any other orders that should be entered by the Court under FRCP 26(c)**  
11 **or under Local Rule CR 16(b) and (c).**

12 The parties will likely agree upon a Joint Protective Order but do not foresee a need  
13 for any further orders from the court under Local Rules CR 16(b) or (c).

14 **6. The date by which the remainder of discovery can be completed.**

15 As reflected in Exhibit A, Plaintiff Amazon.com believes that fact discovery can be  
16 completed by July 29, 2010, and that expert discovery can be completed by October 1, 2010.

17 Defendant Discovery believes that fact discovery can be completed by September 20,  
18 2010, and that expert discovery can be completed by December 2, 2010.

19 **7. Whether the parties agree that a full-time Magistrate Judge may conduct all**  
20 **proceedings, including trial and the entry of judgment, under 28 U.S.C. § 636(c)**  
21 **and Local Rule MJR 13. The Magistrate Judge who will be assigned the case is**  
22 **Mary Alice Theiler. Agreement in the Report will constitute the parties' consent**  
23 **to referral of the case to the assigned Magistrate Judge.**

24 The parties agree that the case should not be assigned to a Magistrate Judge.

**8. Whether the case should be bifurcated by trying the liability issues before the**  
**damages issues, or bifurcated in any other way.**

Plaintiff Amazon.com believes that the case should not be bifurcated.

1 Defendant Discovery believes it is premature to evaluate whether trial should be  
2 bifurcated.

3 **9. Whether the pretrial statements and pretrial order called for by Local Rules CR**  
4 **16(e), (h), (i), and (l), and 16.1 should be dispensed with in whole or in part for**  
5 **the sake of economy.**

6 The parties do not wish to dispense with any of the statements or orders required by  
7 Local Rules CR 16(e), (h), (i) and (l) or 16.1.

8 **10. Any other suggestions for shortening or simplifying the case.**

9 The parties agree that a Markman hearing will be helpful to construe the asserted  
10 claims of the patents-in-suit, thereby narrowing the issues to be addressed at trial.

11 Plaintiff Amazon.com believes that following the guidance of this Court's Local  
12 Patent Rules will aid in expediting this matter. Although either party may bring dispositive  
13 motions as appropriate under the Rules, such proposed motions have no bearing on the  
14 discovery and claim construction deadlines that must be met to efficiently resolve the matter.

15 Defendant Discovery anticipates bringing an early summary judgment motion on the  
16 following bases: (i) as of April 2009 — before Amazon.com filed this suit — Discovery  
17 transferred control over the allegedly infringing instrumentality (the Discovery.com website)  
18 to a third party, Delivery Agent, and does not exercise control over the instrumentality  
19 sufficient to ground liability; (ii) before April 2009, the Discovery.com website was provided  
20 using software licensed by Amazon.com and, in the event it is not protected by license, did  
21 not infringe the patents-in-suit under any possible claim construction. Discovery believes this  
22 motion can be resolved quickly and without resort to claim construction or expert testimony.  
23 To conserve the resources of the parties and the Court, Discovery believes that time should be  
24 provided in the case calendar to hear and resolve the motion before the inception of claim  
construction. As reflected in Exhibit A below, Discovery therefore proposes to extend the

1 deadline for the exchange of proposed terms and claim constructions typically called for by  
2 Local Patent Rule 130(a). This proposal adds only 60 days to the calendar advocated by  
3 Amazon.

4 **11. The date the case will be ready for trial.**

5 Plaintiff Amazon.com advocates a trial beginning on January 31, 2011.

6 Defendant Discovery advocates a trial beginning on April 1, 2011.

7 **12. Whether the trial will be jury or non-jury.**

8 Plaintiff Amazon.com has made a timely demand for a jury trial.

9 **13. The number of trial days required.**

10 The parties estimate that seven to ten trial days will be required.

11 **14. The names, addresses, and telephone numbers of all trial counsel.**

12 **Counsel for Plaintiff Amazon.com:**

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15. **If, on the due date of the Report, all defendant(s) or respondent(s) have not been served, counsel for the plaintiff shall advise the Court when service will be effected, why it was not made earlier, and shall provide a proposed schedule for the required FRCP 26(f) conference and FRCP 26(a) initial disclosures.**

The defendant has been served.

16. **Whether any party wishes a scheduling conference prior to a scheduling order being entered in the case.**

Plaintiff Amazon.com does not believe that a scheduling conference prior to the entrance of a scheduling order is necessary, in light of the fact that the parties' proposed schedules differ only slightly.

Defendant Discovery believes a scheduling conference would be helpful to discuss the differences between the parties' scheduling proposals and the advisability of an early

summary judgment motion in this matter.

Respectfully submitted this 17<sup>th</sup> day of September, 2009.

**CORR CRONIN MICHELSON  
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s/William F. Cronin

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11 Attorneys for Defendant  
12 Discovery Communications, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies as follows:

I am employed at Corr Cronin Michelson Baumgardner & Preece LLP, attorneys of record for Defendant herein.

On September 17, 2009, I caused a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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*Attorneys for Defendant*  
*Discovery Communications, Inc.*

and I hereby certify that I have delivered via U.S. Mail the document to the following non CM/ECF participants:

N/A

1 I declare under penalty of perjury under the laws of the State of Washington that  
2 the foregoing is true and correct.

3  
4 DATED: September 17, 2009 at Seattle, Washington.

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7 Antesha Esteves  
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# **EXHIBIT A**

*Proposed Case Calendar*

<b>Event</b>	<b>Rule*</b>	<b>Calendaring Guidelines</b>	<b>Amazon's Proposed Date</b>	<b>Discovery's Proposed Date</b>
1. Deadline for FRCP 26(f) Conference		Pursuant to Court Order (D.I. 22)	September 3, 2009	September 3, 2009
2. Initial Disclosures Due Pursuant to FRCP 26(a)(1)		Pursuant to Court Order (D.I. 22)	September 10, 2009	September 10, 2009
3. Submit 26(f) plan to Court		Pursuant to Court Order (D.I. 22)	September 17, 2009	September 17, 2009
Estimated Date Scheduling Order to Issue		0	September 30, 2009	September 30, 2009
4. Disclosure of Asserted Claims and preliminary infringement contentions	LPR 120	Within 15 days of entry of case schedule	October 15, 2009	October 15, 2009
5. Non-infringement and Invalidity Contentions	LPR 121	Not later than 30 days after Event No. 4	November 16, 2009	November 16, 2009
6. Proposed Terms for Construction	LPR 130(a)	Not later than 20 days after Event No. 5	December 7, 2009	February 1, 2010
7. Preliminary Claim Construction	LPR 131(a)	Not later than 30 days after Event No. 6	January 6, 2010	March 3, 2010
8. Joint Claim Construction and Prehearing Statement Due	LPR 132(a)	Not later than 45 days after Event No. 7	February 22, 2010	April 19, 2010
a. Construction Expert Disclosures	LPR 132(f)	Not later than 45 days after Event No. 7	February 22, 2010	April 19, 2010
9. Completion of Claim Construction Discovery	LPR 133	Not later than 50 days after Event No. 8	April 13, 2010	June 8, 2010
10. Opening Claim Construction Brief	LPR 134(a)	Not later than 55 days after Event No. 8	April 19, 2010	June 14, 2010

<b>Event</b>	<b>Rule*</b>	<b>Calendaring Guidelines</b>	<b>Amazon's Proposed Date</b>	<b>Discovery's Proposed Date</b>
11. Responsive Claim Construction Brief	LPR 134(c)	Not later than 15 days after Event No. 10	May 4, 2010	June 29, 2010
12. Claim Construction Hearing	LPR 135	Per Court Order and party request	May 27, 2010 (est.)	July 20, 2010 (est.)
Settlement conference	CR 39.1(c) (2)	30 days before mediation	July 6, 2010	August 28, 2010
Completion of fact discovery	CR 16(f)	at least 120 days prior to trial date	July 29, 2010	September 20, 2010
Mediation	CR 39.1(c) (3)	30 days after settlement conference	August 5, 2010	September 27, 2010
Opening expert reports for burden of proof issues	FRCP 26(a)(2)	At least 90 days before trial date	August 12, 2010	October 4, 2010
Rebuttal expert reports due	FRCP 26(a)(2)	30 days after opening reports due pursuant to FRCP 26(a)(2)(C)(ii)	September 13, 2010	November 3, 2010
Completion of expert discovery	CR 16(f)	at least 120 days prior to trial date	October 1, 2010	December 2, 2010
Deadline to file dispositive motions  Will be noted for consideration no earlier than 4 Fridays after filing pursuant to CR 7(d)	CR 16(g)	at least 90 days prior to trial date	November 2, 2010	December 31, 2010
Plaintiff's Pretrial Statement	CR 16(h)	30 days before Agreed Pretrial Order	November 30, 2010	January 31, 2011
Defendant's Pretrial Statement	CR 16(i)	20 days before Agreed Pretrial Order	December 10, 2010	February 10, 2011

Event	Rule*	Calendaring Guidelines	Amazon's Proposed Date	Discovery's Proposed Date
All motions <i>in limine</i> must be filed  Will be noted on the motion calendar seven judicial days thereafter pursuant to CR7(d)(2)			December 15, 2010	February 11, 2011
Conference of attorneys – plaintiff's counsel to arrange	CR 16(k)	At least 10 days before Agreed Pretrial Order	December 20, 2010	February 18, 2011
Deadline for Agreed Pretrial Order	CR 16(e), 16.1	At least 30 days before trial	December 30, 2010	March 2, 2011
Pretrial conference to be scheduled by the Court				
Trial briefs, proposed voir dire questions, proposed jury instructions, and trial exhibits due			January 14, 2011	February 14, 2011
Trial Date			January 31, 2011	April 1, 2011
* LPR = W.D. Wa Local Patent Rule; CR = W.D. Wa Local Civil Rules; FRCP = Federal Rules of Civil Procedure				